



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
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FORT BELVOIR, VIRGINIA 22060-6221

IN REPLY
REFER TO DG

June 5, 2003

**MEMORANDUM CONCERNING THE PROPOSED DEBARMENT OF AZTEC GROUP,
AZTEC ENERGY COMPANY, AZTEC PROPERTIES, AZTEC INVESTMENT
COMPANY AND RICHARD D. MCAULEY**

The Defense Logistics Agency (DLA) this day has issued Notices of Proposed Debarment to Aztec Group, Aztec Energy Company, Aztec Properties, Aztec Investment Company and Richard D. McAuley (Respondents). The proposed actions are taken pursuant to the debarment procedures contained in the Federal Acquisition Regulation (FAR) Subpart 9.4, and the Defense FAR Supplement (DFARS) Subpart 209.4, and pursuant to the authority of the Federal Property Management Regulations (FPMR), 41 CFR 101-45.6 as reflected in DoD 4160.21-M, Chapter XVII.

The DLA actions are based on information in a report from the Defense Energy Support Center (DESC), a field activity of DLA located at Fort Belvoir, Virginia. Information contained in the report from DESC indicates that Respondents lack the present responsibility to be Government contractors.

INFORMATION IN THE RECORD

A summary of the information upon which the proposed debarments are based appears below:

1. Aztec Group, composed of Aztec Energy Company, Aztec Properties, and Aztec Investment Company, is a California corporation that wholesales petroleum products, specializing in fuel oil.
2. During all or part of the time of the seriously improper conduct described below, Richard D. McAuley was the president of the Aztec Group, owning 100% of the capital stock.
3. Crosby & Overton operated a hazardous waste transportation, treatment and storage facility. The company was licensed by the state of California to transport and transfer hazardous waste. It was permitted to store and treat aqueous waste containing hydrocarbons such as waste oil but was not authorized to recycle used oil. Between 1997 and December 2000, Crosby & Overton personnel engaged in a fraud scheme with Richard McAuley.

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4. On January 16, 2003, a Criminal Information was filed in the District Court for the Central District of California, charging Crosby & Overton with a one-count violation of 42 USC § 6928(d)(3), Making a False Statement in a Hazardous Waste Manifest, Criminal Docket No. 03-0039. On March 17, 2003, a Plea Agreement was filed wherein Crosby & Overton agreed to plead guilty. The following information was provided about the nature of the offense and the acts of misconduct in the plea agreement.

5. Between July 1997 and December 2000, Richard McAuley, doing business as Aztec Energy, was hired by a federal contractor called HAZCO to transport and dispose of 200,000 gallons of used or off spec petroleum product from the Army's National Training Center located at Fort Irwin and other military facilities in California. The federal facilities' managers characterized the fuels as "D001" ignitable hazardous waste and arranged to have the fuels shipped as such. Under Federal law, material identified as hazardous waste cannot be transported except to facilities licensed to treat, store and dispose of it and unless accompanied by a hazardous waste manifest (commonly referred to as a "HAZMAT" manifest"). Richard McAuley removed the fuel in large capacity tanker trucks and used the "HAZMAT" manifest describing the fuels as "D001" ignitable hazardous waste. Richard McAuley devised a scheme to sell these loads of waste fuel as "recycled" petroleum to Chem Oil but did not test or treat the fuel prior to sale to Chem Oil. Chem Oil, a marine fuel blender, intended to blend the waste fuel into its own marine bunker fuel for sale in Asia.

6. In July 1997, Richard McAuley contacted Crosby & Overton sales personnel and offered to pay Crosby & Overton nine to ten cents per gallon if Crosby & Overton would accept delivery of the waste fuels, test the fuels for "Chem Oil's" acceptance and allow the waste fuels that met Chem Oil's criteria to be sent directly to "Chem Oil" without further treatment, using bills of lading instead of hazardous waste manifests. A number of unnamed Crosby & Overton senior management personnel agreed to the scheme based on consultation with Crosby & Overton's Director of Environmental Compliance. The director was not identified in the plea agreement. If the fuel met Chem Oil's criteria of no more than three to five per cent of water per volume, Crosby & Overton agreed to complete a portion of the HAZMAT manifests to indicate that the tank load had been "tank treated" for recycling at Crosby & Overton. This would allow the company to transfer the load via bill of lading. However, the loads were never unloaded or treated by Crosby & Overton. Crosby & Overton intentionally forwarded the waste to recycling facilities on standard bills of lading without having treated the waste in any manner.

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7. On November 19, 1999, Richard McAuley arranged to transfer 6,705 gallons of hazardous waste fuels from Ft. Irwin to Crosby & Overton's facility. An unnamed Crosby & Overton employee falsely wrote information on the HAZMAT manifest that the water had been treated when the employee knew it had not been treated. Between 1997 and December 2000, Crosby & Overton transported over 83 tanker truckloads of waste fuel from various military facilities in this fashion. Crosby & Overton invoiced Richard McAuley approximately \$45,170.31 for these sham recycling activities.

8. Between February 4, 1998, and December 17, 1999, Crosby & Overton engaged in a similar scheme with Richard McAuley that involved commingled petroleum products that were generated at the GATX Corporation products terminal. Crosby & Overton received 246 tanker truckloads and invoiced Richard McAuley \$89,829.34 for these sham recycling activities. Crosby & Overton intentionally forwarded the waste to recycling facilities on standard bills of lading without having treated the waste in any manner.

BASIS FOR THE PROPOSED DEBARMENT

Based on the summary of facts above, it appears that:

1. The information in the administrative record indicates that Richard D. McAuley has engaged in improper conduct so serious and compelling a nature that it affects his present responsibility as a Government contractor or subcontractor. His improper conduct indicates a lack of business integrity or business honesty warranting debarment, pursuant to FAR 9.406-2(a)(5) and (c).

2. Under FAR 9.406-1(b), debarment may be extended to affiliates of a contractor. FAR 9.403 ("Affiliates.") states that, "Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other or, (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership or principal employees as the contractor that was debarred, suspended, or proposed for debarment."

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a. Richard D. McAuley and Aztec Group are affiliates, as defined in FAR 9.403 ("affiliates"), because, directly or indirectly, Mr. McAuley controls or can control Aztec Group. The affiliation of Mr. McAuley and Aztec Group provides a cause for its debarment, pursuant to FAR 9.406-2 (c).

b. Richard D. McAuley and Aztec Investment Company are affiliates, as defined in FAR 9.403 ("affiliates"), because, directly or indirectly, Mr. McAuley controls or can control Aztec Investment Company. The affiliation of Mr. McAuley and Aztec Investment Company provides a cause for its debarment, pursuant to FAR 9.406-2 (c).

c. Richard D. McAuley and Aztec Properties are affiliates, as defined in FAR 9.403 ("affiliates"), because, directly or indirectly, Mr. McAuley controls or can control Aztec Properties. The affiliation of Mr. McAuley and Aztec Properties provides a cause for its debarment, pursuant to FAR 9.406-2 (c).

d. Richard D. McAuley and Aztec Energy Company are affiliates, as defined in FAR 9.403 ("affiliates"), because, directly or indirectly, Mr. McAuley controls or can control Aztec Energy Company. The affiliation of Mr. McAuley and Aztec Energy Company provides a cause for its debarment, pursuant to FAR 9.406-2 (c).



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